

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:04  
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Date:  
June 20, 2007

### Legend

Grantor	-
Spouse	-
Child A	-
Child B	-
Trust	-
Date 1	-
Year 1	-
Year 2	-
Year 3	-
Year 4	-
Year 5	-
Year 6	-
<u>\$M</u>	-
<u>\$N</u>	-
<u>\$O</u>	-
<u>\$P</u>	-
<u>\$Q</u>	-
<u>\$R</u>	-

Dear :

This letter is in response to a letter from your authorized representative requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code to make allocations of Grantor's and Spouse's respective generation-skipping transfer (GST) exemptions.

The facts and representations submitted are summarized as follows:

Grantor and Spouse retained an attorney who in Year 1, drafted a trust instrument (Trust) for the primary benefit of their children, Child A and Child B, and their descendants. However, neither Grantor nor Spouse signed the instrument. Notwithstanding that the Trust was not executed in Year 1, Grantor transferred \$M to Trust. Grantor and Spouse each filed separate United States Gift (and Generation-Skipping Transfer) Tax Returns, Forms 709, on which they elected under § 2513 to treat all transfers in Year 1 as made one-half by each spouse. The accounting firm that prepared the returns failed to include a copy of Trust with the return and failed to allocate Grantor's and Spouse's available GST tax exemptions to the transfers to Trust in Year 1.

In Year 2, Grantor and Spouse transferred \$N to Trust but, pursuant to advice from the accounting firm, did not file gift tax returns for Year 2. Consequently, Grantor and Spouse did not allocate their available GST tax exemption to the transfers to Trust in Year 2.

On Date 1 in Year 3, Grantor revised Trust and formally executed the trust instrument such that Trust was irrevocable. Subsequently, in Year 3, Grantor transferred \$O to Trust. Grantor and Spouse filed separate gift tax returns on which they elected to treat the transfer in Year 3 as made one-half by each spouse. The accounting firm prepared the returns and failed to allocate Grantor's and Spouse's available GST tax exemptions to the transfers to Trust in Year 3.

In Year 4, Grantor transferred \$P to Trust in two separate transfers. Grantor and Spouse again filed separate gift tax returns on which they elected to treat all transfers in Year 4 as made one-half by each spouse. The accounting firm again prepared the returns and again failed to allocate Grantor's and Spouse's available GST tax exemptions to the transfers to Trust in Year 4.

Likewise, in Year 5 Grantor transferred \$Q to Trust. Again, Grantor and Spouse filed separate gift tax returns on which they elected to treat the transfer in Year 5 as made one-half by each spouse. The accounting firm again prepared the returns and again failed to allocate Grantor's and Spouse's available GST tax exemptions to the transfers to Trust in Year 5.

In Year 6, Grantor and Spouse each separately transferred \$R to Trust. Because the transfers were made by each donor, Grantor and Spouse did not elect to treat the transfers as made one-half by each spouse. The accounting firm again prepared the returns and again failed to allocate Grantor's and Spouse's available GST tax exemptions to the transfers to Trust in Year 6.

It is represented that no additions have been made to Trust since Year 6, and no distributions have been made to skip persons from Trust.

Section 2601 of the Internal Revenue Code imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under section 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines "applicable rate" as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess of 1 over the "applicable fraction." The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of GST exemption under § 2631 allocated to the trust (or to property transferred in a direct skip), and the denominator is the value of the property transferred to the trust or involved in the direct skip.

Under § 2631(a) effective for the years involved in this case, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2632(a)(1) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(2) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than a direct skip, is made on Form 709.

Section 2642(b)(1) provides, in relevant part, that if the allocation of the GST exemption to any transfers of property is made on a timely filed gift tax return for such transfer, the value of such property for purposes of determining the inclusion ratio shall be its value as finally determined for purposes of chapter 12, and such allocation shall be effective on and after the date of such transfer.

Section 2642(f)(1) states that, for purposes of determining the inclusion ratio, if an individual makes an inter vivos transfer of property, and the value of such property would be includible in the gross estate of such individual under chapter 11 if such individual died immediately after making such transfer (other than by reason of § 2035),

any allocation of GST exemption to such property shall not be made before the close of the estate tax inclusion period (ETIP). Section 2642(f) (2) provides generally that the value of such property shall be its value as of the close of the estate tax inclusion period.

Section 2642(f) (3) provides that the term "estate tax inclusion period" means any period after the transfer described in section 2642(f)(1) during which the value of the property involved in such transfer would be includible in the gross estate of the transferor under chapter 11 if the transferor died.

Under § 2652(a)(1) and § 26.2652-1(a)(1), generally, the transferor for purposes of the GST tax is the individual with respect to whom the property was last subject to Federal estate or gift tax. Section 2652(a)(2) and § 26.2652-1(a)(4) provide that, if, under § 2513, one-half of a gift is treated as made by an individual and one-half is treated as made by the spouse of the individual, then for purposes of the GST tax, each spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor spouse, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall, by regulation, prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers is to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3.

Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an election described in § 2642(b)(1) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or to advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Grantor and Spouse are granted an extension of time of 60 days from the date of this letter to make allocations of their respective GST exemptions, with respect to the transfers to Trust, as follows:

Prior to Date 1 Trust was subject to an ETIP. On Date 1, any amounts previously transferred to Trust became completed gifts and the ETIP closed. Accordingly, an extension is granted to allocate Grantor and Spouse's GST exemptions with respect to the transfers to Trust that became complete on Date 1. The allocations will be effective as of Date 1, and the inclusion ratio resulting from these allocations will be determined based on the fair market value of Trust as determined as of Date 1.

In addition, an extension is granted to allocate Grantor and Spouse's GST exemptions with respect to transfers to Trust made after Date 1 in Years 3 through 6. The allocations with respect to these transfers will be effective as of the dates of the transfers and the inclusion ratio of the trust resulting from these allocations will be determined based on the value of the transfers to trust as determined for Federal gift tax purposes.

These allocations should be made on separate supplemental Forms 709 United States Gift (and Generation-Skipping Transfer) Tax Return filed for Years 3 through 6. The forms are to be filed with the Internal Revenue Service Center, Cincinnati, OH

45999. A copy of this letter should be attached to the supplemental Forms 709. Copies are enclosed for this purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The ruling contained in this letter is based upon information and representations submitted by Grantor and Spouse and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

Pursuant to the Power of Attorney on file with this office, this letter is being sent to Taxpayers' representative.

This ruling is directed only to the Taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

William P. O'Shea  
Associate Chief Counsel  
Passthroughs & Special Industries

Enclosures  
Copy for section 6110 purposes  
2 copies of this letter

cc: